SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 376.

JOHN E. KINNANE, UNITED STATES ATTORNEY FOR THE EASTERN DISTRICT OF MICHIGAN, APPELLANT,

vs.

DETROIT CREAMERY COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

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1 *Bill of complaint.*

United States of America. In the District Court of the United States for the Eastern District of Michigan, Southern Division, in equity.

To the District Court of the United States for the Eastern District of Michigan, Southern Division, in equity:

Belle Isle-East Side Creamery Company, a Michigan corporation; Detroit Creamery Company, a Michigan corporation; State Creamery Company, a Michigan corporation; John Schlaff Creamery Company, a Michigan corporation; Towar's Wayne County Creamery, a Michigan corporation; and J. H. Wilson & Sons Creamery Company, a Michigan corporation, file this bill of complaint against John E. Kinnane, William F. Connolly, Fred H. Diehl, William Brogan, Frances E. Burns, C. A. Clark, W. J. Cusick, and A. E. Sarvis, as defendants, and show unto this honorable court:

First. That each of the corporations aforesaid named is organized and existing under the laws of the State of Michigan, has its principal headquarters and place of business at Detroit, Michigan, and is within the statutes governing and defining the jurisdiction of this court, is a citizen of the United States and a resident of the Eastern District thereof, Southern Division; that each of the defendants above named is a citizen of the United States and a resident of the State of Michigan and of the Eastern District thereof, Southern Division.

Second. Each of the plaintiffs is engaged and has for a long time been engaged in the business of purchasing milk from producers thereof and preparing the same for the market and for resale distribution to the consumers thereof within the city of Detroit and adjacent territory; that each of the plaintiffs has an investment in its business of upwards of $100,000; that the purchase of milk, its preparation and distribution to the ultimate consumer at retail is an important, vital, and essential part of its business.

2 Third. The price of milk for the past several years in Detroit has been established between the producers and distributors by the Detroit milk commission, a body composed of men who, by reason of continuing investigation and contact with the conditions properly entering into a reasonable price for the retail and wholesale sale of milk, have become practical experts. Under the price schedule fixed from to time by such commission the rights of the producers and distributors on the one hand, and of the public on the other have been duly protected and safeguarded, and the price of milk per quart, for sale at retail to the public was, until the illegal and unlawful action of the defendants as hereinafter stated, prescribed for the month of March, 1920, at 16¢ per quart, based on the price to the producer of $4.05 per hundred for milk.

Fourth. The defendants, other than John E. Kinnane, claim and assert that they, collectively, compose a board or body designated as

"Federal Fair Price Commission," and as the plaintiffs and each of them are given to understand by inquiry, their asserted and claimed authority is solely founded and rested upon certain statutes of the United States commonly called and designated as the "Lever Act" to which reference is made in this bill of complaint, particularly to section 2, the amended act being entitled, "An act to amend an act entitled 'An act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel,' approved August 10, 1917, and to regulate rents in the District of Columbia."

Fifth. On information and belief the plaintiffs and each of them allege that the said defendants so claiming to constitute the Federal Fair Price Commission were not legally appointed and do not legally hold any such office and that their actions on that account are void and of no effect.

3 Sixth. The plaintiffs and each of them aver and charge that recently on or about April 6, 1920, the said defendants, other than the said Kinnane, in their claimed and asserted capacities as members of the said Federal Fair Price Commission, fixed and prescribed a schedule for the sale of milk at retail to commence on April 15, 1920, at 14¢ per quart and 8¢ per pint, and at 13¢ per quart and 7¢ per pint wholesale.

Seventh. In point of fact, plaintiffs are advised and charge jointly and severally that the personnel of said commission, as aforesaid stated, were selected by the defendant, John E. Kinnane, either directly or indirectly.

Eighth. The defendant John E. Kinnane occupies a position of district attorney of the United States for the eastern district of Michigan. In that capacity the defendant is charged with the duty of enforcing the valid laws and statutes of the United States of America. The said defendant has given out publicly through the press as well as otherwise that he, being United States district attorney, will cause to be prosecuted any person such as the plaintiffs and each of them who fails to comply with and to obey the price schedule fixed in manner and form by the defendants; and he has given out that the said act of the said defendants, composing the aforesaid commission, in so limiting the prices for the retail and wholesale distribution and delivery of milk, is valid and binding and supersedes all other regulations, statutory or common law, and that as a result of such action of such commission any other rights of the plaintiffs and each of them to conduct their business as they and each of them had heretofore conducted it, therefore is prohibited and made a penal offense; and that pursuant to section 2 of the so-called Lever Act, above referred to, each and every sale of milk made except at the prices fixed by such commission will constitute a penal offense against the United States and subject each actor to such transaction to the penalty of imprisonment for a period of

not exceeding two years, and further subject such actor to the possibility of fine not exceeding $5,000.

Ninth. The plaintiffs and each of them have built up their respective businesses through a long series of years, and a unique but indispensable part of the conduct and operation of the sale and distribution of milk is that the milk to the consumer is delivered by milk salesmen who take the milk in wagons or other equipages from door to door to the householder or to the ultimate consumer. All of the plaintiffs sell at retail and wholesale each day, in the city of Detroit, upwards of 200,000 quarts; to particularize, the Detroit Creamery Company sells through its milk salesmen, calling at each house, substantially in manner and form above stated, at retail, more than 100,000 quarts per day; Towar's Wayne County Creamery sells approximately 42,000 quarts per day; Bell Isle-East Side Creamery Company sells approximately 38,000 quarts per day; John Schlaff Creamery Company sells approximately 30,000 quarts per day; J. H. Wilson & Sons Creamery Company sells approximately 14,000 quarts; for such distribution there are required the services of upwards of five hundred milk salesmen and each salesman makes on an average not less than two hundred sales at retail to householders and ultimate consumers per day.

Tenth. Plaintiffs allege jointly and severally that the fines capable of being levied or claimed rightfully to be levied on one day's transactions against the milk salesmen would aggregate millions of dollars, and the number of transactions which, if such claims of the defendants are well founded, would justify a sentence of imprisonment, would exceed one hundred thousand.

Eleventh. The plaintiffs have at large expense trained and developed and continue to develop and employ milk salesmen. They have, for the purpose of distribution of milk, purchased and hold for use in carrying on of the retail milk business a large number of vehicles of various kinds, representing in the individual case of each plaintiff an investment of upwards of ten thousand dollars ($10,000).

Twelfth. The plaintiffs aver that by reason of the threats of said defendants to cause any person, including both plaintiffs and their employees to be arrested and charged with violation of the Federal law with the consequent penalty of imprisonment and prohibitive fines, as earlier stated, their said milk salesmen will not continue in their employ and deliver milk at lawful prices, that is to say, at prices above 14¢ per quart and 8¢ per pint, retail, and 13¢ per quart and 7¢ per pint at wholesale, and as a result of the claimed and usurped authority of the defendants the business of each of the plaintiffs will be irreparably injured and destroyed so long as the threats of the defendants continue to exert pressure upon the said plaintiffs and their employees, unless each of the plaintiffs through the unlawful threats and intimidation of the defendants complied with the unlawful and illegal schedule promulgated by them; whereas, plaintiffs aver that each of them has the right to have its business conducted

free from the effects of such schedule so promulgated by the defendants and to have the right to conduct and actually conduct their business respecting the sale and fixing the price of milk at retail and wholesale undisturbed by the defendants.

Thirteenth. Insofar as said act undertakes by the use of the phrase "That it is hereby made unlawful for any person * * * to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries * * *" does not and can not legally constitute or create a crime under the Constitution of the United States and the amendments thereto for the reason that the alleged crime is of necessity expressed in such vague, indefinite and uncertain a manner and without any reasonably certain standard as to be
5 a violation of the rights of citizens of the United States, to which the plaintiffs belong and particularly of the sixth amendment requiring parties to be advised of the nature of the crime or accusation lodged or to be brought against them.

Fourteenth. The threatened criminal prosecution against plaintiffs, each of them and their employees, who proposed to conduct, as they have a right, their business in the respects covered by this bill and to charge a lawful rate for the distribution of milk at retail and wholesale will, under the circumstances, illegally and unlawfully deter and prevent them, and each of them, from carrying on their respective businesses and operate to deprive the plaintiffs, and each of them, of their property, both tangible and intangible, without due process of law and in violation of the Constitution of the United States and amendments thereto, and the plaintiffs, and each of them, show that the subject matter of controversy as applied to each of them exceeds in value the principal sum of $3,000 exclusive of interests or costs and that they found their right to come into this court upon a Federal right, as above stated, arising under the Constitution of the United States and amendments thereto. The enforcement or threat of enforcement of the so-called Federal Fair Price Commission's schedule would involve plaintiffs and each of them in contractual difficulties and litigation over existing contracts for supplying of milk with their respective producers and would lessen to a substantial degree their course of supply of milk, and in this way steadily, progressively, and surely result in the diminuation of, impairment, and appreciable destruction of their established business, constituting property under the Federal Constitution and its amendments. Further, the enforcement or threat of enforcement would subject in form the milk drivers to arrest and imprisonment, require them, in order to regain the liberty to provide bail, and further subject them to the indignity of indictment, each and all of which steps are and would be illegal and void; nevertheless, the threats of the defendants under their claimed au-
7 thority to do the various acts herein complained of will unavoidably cause and has caused such apprehension and fear in the officers and employees of the plaintiffs and each of them as to have

persuaded and coerced them to leave plaintiffs service to the irreparable injury of their said several businesses if the said plaintiffs require such officers and employees to follow and obey such schedule of prices for milk as these plaintiffs aver they and each of them have a right to fix in place and instead of the schedule promulgated by the defendants, and the plaintiffs and each of them further aver that the only way in which they could preserve their respective businesses and hold their employees and officers in line would be to comply with the fiatic promulgation, void and illegal though it be, of the defendants unless the threats and oppressions and attempted enforcement of such schedule in manner and form as herein disclosed be stayed and prevented through the injunctive processes of this court. Further, said plaintiffs aver that they and each of them have subsisting arrangements for their arrangements for their respective continuing supplies of milk from producers, and that when and as such milk comes under their respective possession and control such milk is property which such owner has the right to market without injury or interference by the defendants or any one of them whose pretended authority under color of Federal right—the sole and only source of the defendants' pretended right to control—has no basis other than the so-called Lever Act is, as applied to these plaintiffs and each of them and to the property of each of them, unconstitutional and void.

Fifteenth. The defendants are claiming to act and found their positions under color of Federal right, to wit, the Lever Act aforesaid mentioned. Plaintiffs and each of them aver that the said Federal authority, under color of which the defendants and each of them are engaged in the unlawful conduct to the irreparable injury
8 of the plaintiffs' respective businesses, is void and that therefore the pretended Federal right under which said defendants are so illegally acting affords them no justifications and renders them liable to be sued as defendants to prevent such wrong being inflicted upon each of said plaintiffs and their respective businesses in this court; and that no adequate remedy at law exists in favor of the plaintiffs or any of them, and that this court has sole jurisdiction of the subject matter of the grievance.

Sixteenth. Plaintiffs while not required to make reference thereto as part of this bill of complaint, nevertheless in order to advise the court as to the merits of the controversy—although as already stated the defendants are lacking utterly in authority and power to deal with the subject matter of the grievance at all—charge that the said defendants, other than the said John E. Kinnane, acted capriciously and without affording the plaintiffs and other parties similarly affected any real opportunity to be heard and without any proper examination or investigation into the facts; that the Detroit Milk commission for some years has fixed the price to be paid to the producers of milk and by the consumers, and that the price so fixed by them was 16¢ per quart and 10¢ per pint, at retail. There

is a direct and necessary relation between the price at which milk is to be sold to the public and the price to be paid to the producer; contracts exist between plaintiffs and each of them and producers of milk. If the schedule promulgated by the defendants and threatened to be enforced by the defendant Kinnane should be required to be adhered to and obeyed by the plaintiffs and each of them, and other distributors of milk in Detroit, it would of necessity require the reduction in price to be paid to the producers, and as a necessary consequence, the plaintiffs and each of them are advised by the Milk Producers' Association, which includes substantially all of the producers of milk, that the reduced price which would have to be paid to such producers if milk is to be sold at the schedule promulgated by the defendants would have to be materially
9 reduced, and such reduced price would not represent the actual cost to the producer. The result would be that the necessary supply of milk for Detroit would not be forthcoming. Plaintiffs aver that the price which they proposed to charge—varying as it does in different seasons of the year—is but a fair price, whereas the alleged price fixed by the defendants is a confiscatory one, and that the plaintiffs were denied a proper hearing by said commission. If it should become material, plaintiffs stand ready to prove that the price fixed by the said defendants is confiscatory, and that the difference in price between what is paid to the producer and what is charged to the consumer is an essential and unavoidable cost of handling and properly preparing and delivering the milk to the consumer, and affords only a legitimate, legal, and proper profit to the plaintiffs and each of them.

Seventeenth. Plaintiffs are advised by their counsel that the United States District Court at St. Louis, after a full review of the law and authorities having to do with the section of the Lever Act involved and under which portion alone the defendants claim the source of their right and authority, to be void for the reasons outlined in this bill, that is to say,

(a) Said purported statute is vague and indefinite and uncertain;

(b) Its terms fix no immutable standard of guilt, but leave such standard to the variance of different courts and juries which may be called upon to enforce a decision;

(c) Because said purported statute does not inform such defendants of the nature and cause of the accusation against them.

(d) Because said purported statute does not advise in advance a citizen of the United States as to what acts would constitute a violation thereof;

(e) Because such statute fails utterly to define a crime, but in essence simply declares that any person who shall commit any unjust or unreasonable act shall be deemed guilty of a felony.

10 (f) Because said statute would deprive, if enforced, citizens of their property and liberty without due or any process of law.

Eighteenth. Inasmuch as the plaintiffs and each of them are without any remedy at law or in any other court, they and each of them pray for the following relief:

A. That William F. Connolly, Fred H. Diehl, William Brogan, Frances E. Burns, C. A. Clark, W. J. Cusick, and A. E. Sarvis, claiming to constitute the Federal Fair Price Commission, and John E. Kinnane, personally and in his capacity as United States district attorney, be enjoined temporarily and permanently from enforcing or attempting to enforce the said schedule of rates for the wholesale and retail sale of milk against the plaintiffs or any of them; that the defendants and each of them be enjoined from taking any steps to enforce such mandate or to otherwise interfere with the free conduct of the business of each of the plaintiffs, whether by commencement of criminal proceedings or otherwise.

B. That the defendants and each of them as against the plaintiffs and each of them in respect of the contents of this bill, be prevented from harrassing or oppressing the plaintiffs or any of them or any of their employees, agents, or representatives in the premises; that plaintiffs and each of them obtain such relief general or special as equity in the facts or circumstances warrant.

And plaintiffs will ever pray, etc.,

BELLE ISLE-EAST SIDE CREAMERY COMPANY,
By HENRY LAETHEM, *President.*
Attest:
C. M. HAYBOW, *Secretary.*
DETROIT CREAMERY COMPANY,
By J. H. REMICK, *President.*
F. W. ULRICH, *Secretary.*
STATE CREAMERY COMPANY,
By PETER VLASIC, *President.*
D. N. LINDSAY, *Secretary.*

11

JOHN SCHLAFF CREAMERY COMPANY,
By JOHN SCHLAFF, *President.*
WILLIAM A. SLOAN, *Secretary.*
TOWAR'S WAYNE COUNTY CREAMERY,
By WILLIAM J. KENNEDY, *President.*
HENRY E. GILL, *Secretary.*
J. H. WILSON & SONS CREAMERY COMPANY,
By J. H. WILSON, *President.*
ANNIE WILSON, *Secretary.*

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

On this sixteenth day of April, 1920, personally appeared before me, a notary public, in and for Wayne County, State of Michigan, Henry Latham and A. M. Haybow, who severally made oath and said that they were respectively the president and secretary of Belle

Isle-East Side Creamery Company, a Michigan corporation, that they had signed and executed the said bill of complaint in behalf of said company and they are duly authorized so to do, and that in behalf of said plaintiff they aver that they have read the contents of said bill of complaint and that as to the matters therein stated the same is true in substance and in fact except as to matters stated on information and belief and in respect of such matters the said affiants each for himself believed the same to be true.

KEITH M. HOWELL,
Notary Public, Wayne County, Michigan.

My commission expires February 18, 1924.

12 UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

On this sixteenth day of April, 1920, personally appeared before me, a notary public in and for Wayne County, State of Michigan, J. H. Remick and F. W. Ulrich, who severally made oath and said that they were respectively the president and secretary of Detroit Creamery Company, a Michigan corporation, that they had signed and executed the said bill of complaint in behalf of said company and they are duly authorized so to do, and that in behalf of said plaintiff they aver that they have read the contents of said bill of complaint and that as the matters therein stated the same is true in substance and in fact except as to matters stated on information and belief and in respect of such matters the said affiants each for himself believed the same to be true.

KEITH M. HOWELL,
Notary Public, Wayne County, Michigan.

My commission expires February 18, 1924.

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

On this sixteenth day of April, 1920, personally appeared before me, a notary public in and for Wayne County, State of Michigan, Peter Vlasic and D. N. Lindsay, who severally made oath and said that they were respectively the president and secretary of State Creamery Company, a Michigan corporation, that they had signed and executed the said bill of complaint in behalf of said company and they are duly authorized so to do, and that in behalf of said plaintiff they aver that they have read the contents of said bill of complaint and that as to the matters therein stated the same is true in substance and in fact except as to matters stated on information and belief and in respect of such matters the said affiants each for himself believed the same to be true.

KEITH M. HOWELL,
Notary Public, Wayne County, Michigan.

My commission expires February 18, 1924.

13 UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

On this sixteenth day of April, 1920, personally appeared before me, a notary public in and for Wayne County, State of Michigan, John Schlaff and William A. Sloan, who severally made oath and said that they were respectively the president and secretary of John Schlaff Creamery Company, a Michigan corporation, that they had signed and executed the said bill of complaint in behalf of said company and they are duly authorized so to do, and that in behalf of said plaintiff they aver that they have read the contents of said bill of complaint and that as to the matters therein stated the same is true in substance and in fact except as to the matters stated on information and belief, and in respect of such matters the said affiants each for himself believed the same to be true.

KEITH M. HOWELL,
Notary Public, Wayne County, Michigan.

My commission expires February 18, 1924.

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

On this sixteenth day of April, 1920, personally appeared before me, a notary public in and for Wayne County, State of Michigan, William J. Kennedy and Henry E. Gill, who severally made oath and said that they were respectively the president and secretary of Towars Wayne County Creamery, a Michigan corporation, that they had signed and executed the said bill of complaint in behalf of said company and that they are duly authorized so to do, and that in behalf of said plaintiff they aver that they have read the contents of said bill of complaint and that as to the matters therein stated the same is true in substance and in fact except as to matters stated on information and belief, and in respect of such matters the said affiants each for himself believed the same to be true.

MILDRED A. CIDDY,
Notary Public, Wayne County, Michigan.

My commission expires October 5, 1923.

14 UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

On this sixteenth day of April, 1920, personally appeared before me, a notary public in and for Wayne County, State of Michigan, J. H. Wilson and Annie Wilson, who severally made oath and said that they were respectively the president and secretary of J. H. Wilson & Sons Creamery Company, a Michigan corporation, that they had signed and executed the said bill of complaint in behalf of said company and they are duly authorized so to do, and that in behalf of said plaintiff they aver that they have read the contents of said bill of complaint and that as to the matters therein stated

the same is true in substance and in fact except as to matters stated on information and belief, and in respect of such matters the said affiants each for himself believed the same to be true.

KEITH M. HOWELL,
Notary Public, Wayne County, Michigan.

My commission expires February 18, 1924.

STEVENSON, CARPENTER, BUTZEL & BACHUS, and D. B. HAYES, Detroit, Mich., *attorneys for plaintiff.*

Filed April 17, 1920.

ELMER W. VOORHEIS,
Clerk.

15 *Answer of John E. Kinnane, U. S. attorney.*

United States of America. In the District Court of the United States for the Eastern District of Michigan, Southern Division. In equity.

DETROIT CREAMERY COMPANY, BELLE ISLE EAST SIDE Creamery Company, John Schlaff Creamery Company, State Creamery Company, Towars Wayne County Creamery, J. H. Wilson & Sons Creamery Company, complainants,

vs.

JOHN E. KINNANE, WILLIAM F. CONNOLLY, FRED H. Diehl, W. William Brogan, Frances E. Burns, C. A. Clark, W. J. Cusick, and A. E. Sarvis, defendants.

No. 331.

The answer of John E. Kinnane, United States attorney for the Eastern District of Michigan, to the bill of complaint filed in the above entitled cause, shows:

(1) This defendant admits paragraph one of the bill of complaint filed in said cause, except that part which states that the complainants are "within the statutes covering and defining the jurisdiction of this court," and avers that all of the said complainants are residents of the State of Michigan and of the Eastern District thereof, and all of said defendants are residents of said State and district.

(2) This defendant admits that each of the complainants has been, for a long time, in the business of purchasing milk, preparing the same for market and for distribution within the city of Detroit and additional territory, and admits that each of said complainants has an investment in its business of $100,000.00 and upwards, and that the purchase of milk and its preparation and delivery to the ultimate consumer at retail is essential and an important part
16 of the business of each of said complainants, but alleges that the complainants do not purchase milk direct from the pro-

ducers, but through an organization of the producers known as the Michigan Milk Producers' Association.

(3) This defendant admits that the price of milk for several years past in Detroit has been established between producers and distributors and the public, by a body of men called the Detroit milk commission, but avers that said commission has no legal existence and no legal authority whatsoever. Defendant admits that the schedule fixed from time to time by the so-called commission has protected the rights of the producers and distributors, but denies that said commission is representative of the public or has protected the consumers' rights. Defendant has no knowledge as to the expertness of the members of the commission, and neither admits nor denies the allegation regarding the same, but avers and charges the fact to be that the members of said commission are in high favor with the said producers' association, and the organization of the milk distributors, to wit, the Detroit Bottle Exchange, so much so that these two organizations provide in their contract that they agree to accept "such prices for milk delivered as the Detroit milk commission, as at present constituted, shall determine and fix."

This defendant admits that the prices of milk fixed by the so-called milk commission are as alleged in paragraph 3 of said bill, and avers that the prices are further fixed by said commission for milk to the consumer by the pint, at 10¢ per pint, which is an unreasonable and excessive price, being an advance of over 25% over the price of milk delivered in quarts, and this defendant is informed that this provision is extensively abused by dealers who sell by the pint, claiming that they have no quart bottles, or no milk in quart bottles, thereby exacting 20¢ per quart from the consumer.

(4) This defendant admits that the defendant herein, other than himself, constitute the body designated as the Federal Fair Price Committee, and avers that said defendants and each of them have been duly appointed as such members of said committee by the Attorney General, acting for and on behalf of the President of the United States, under the act of Congress known as the Lever Act, and the amendments thereto adopted by Congress in, to wit, the month of October, 1919.

(5) This defendant denies the allegation in paragraph 5 of said bill of complaint that said defendants, other than himself, are not legally appointed, and avers that they were appointed regularly by the Attorney General, and that each of them holds his commission from the Attorney General in Washington, and that they and each of them have filed their oaths of office in the Department of Justice at Washington.

(6) This defendant admits paragraph 6 of said bill.

(7) This defendant admits that he recommended the appointment of the persons constituting said fair-price committee, but avers that the appointment of the committee and its members was made by the Attorney General of the United States as aforesaid.

(8) This defendant admits that he occupies the position of United States attorney for the Eastern District of Michigan and is charged with the duty of enforcing the laws of the United States in said district. He admits that he has stated that as such officer he will give the support of his office to the work of said fair-price committee, acting within proper limits, and that he approves of the judgment of said fair-price committee in its action relative to the price of milk in the city of Detroit; that he has not made any statement or reached any determination as to any method of procedure against the complainants or others who sell milk at excessive prices for obvious reasons, as it is necessary to act upon conditions that develop in matters of that kind, and that it is probable that prosecutions would be based on the provisions of the Lever law, so called, providing punishment for monopolizing or attempting to monopolize the milk supply of the city of Detroit, or for conspiring to limit the facilities for supplying milk to said city, or to restrict said supply or to restrict the distribution thereof, in order to enhance the price thereof.

(9) This defendant admits that the complainants have built up their respective businesses through a series of years in the sale and distribution of milk, and that deliveries are made from door to door by them to householders or the ultimate consumer, as well as to those using large quantities of milk. He admits that the complainants sell daily upwards of 200,000 quarts of milk in said city, and on information and belief admits that the quantity sold by each of the complainants is substantially as stated in paragraph 9 of said bill. This defendant is not informed as to the number of salesmen employed by all of said complainants, but believes it is approximately 500, as stated in paragraph 9 of said bill.

This defendant, further answering, avers that the arrangement and system through which milk is furnished to Detroit is not known to the public, but is substantially as follows: That between the producer and consumer of milk are two powerful organizations, to wit, the Michigan Milk Producers' Association and the Detroit Bottle Exchange. The first of these acts for the producers of milk in what is known as the "Detroit milk area," and the second, the
17 Detroit Bottle Exchange, is the organization of the milk distributors in and around Detroit. The "Detroit milk area" is a limited zone arbitrarily created by said organizations, embracing the territory lying in the State of Michigan within 70 miles from the city of Detroit, it being defined in their contracts as follows:

"The Detroit milk area as referred to above shall be construed to include all that territory lying within a radius of 70 miles of the city of Detroit."

That in and by such contract (a copy being hereto attached and marked "Exhibit A" and made a part hereof) it is, among other things, provided that said Detroit distributors shall buy, receive, handle or distribute no milk other "than that purchased from party of the first part, without the consent of the first party in writing,"

and further providing that if said first party should consent, that the distributors handle any other milk than from said limited zone and covered by their contract, that it shall be on terms covered by said contract. Provision is also made in the scheme for distribution that the Milk Producers' Association obtain from the milk producers in its territory exclusive contracts for the handling and marketing of the milk produced by them, together with the provision that the Detroit distributors, through its said bottle exchange, shall deduct from and pay over to the Milk Producers' Association 1¢ for every 100 pounds of milk delivered under the contracts, which amounts in the aggregate to approximately $60,000.00 a year.

The Detroit Bottle Exchange includes in addition to the complainants herein, substantially all of the milk distributors in the city of Detroit, and the total amount of milk supplied to said city of Detroit and suburbs, is approximately 90,000 gallons or
18 360,000 quarts, per day. At the price that this milk is now being delivered, the aggregate sum paid by the public therefor is something more than $20,000,000.00 per year.

That the price now fixed and paid to the purchasers is $4.05 per hundred pounds and each 100 pounds contains 46 quarts of milk. Therefore, the price received by the producers is approximately 8.8c a quart, while the amount received by the distributors is 7.2¢ a quart. These figures extended in the aggregate show the following results: That for the 365 days of the year the milk producers receive for the milk which supplies the city and vicinity approximately $11,000,000.00, while the distributors receive as their share approximately $9,000,000.00, or nearly as much for the distribution and delivery of milk in the city as is paid to the men and people who produce and bring it here. That this arrangement deprives the city of Detroit, in an arbitrary and unreasonable manner of its natural supply of milk from the territory tributary to the city, limiting such supply to an arbitrary zone of 70 miles, which apparently has not been extended to meet the city's phenomenal growth and greater demands for milk. That purchasers outside of this 70-mile zone are barred from delivering milk in the city, through the above contracts and combination, and the city is deprived of the benefit of the additional supply of milk that would come from the territory, if the same was not arbitrarily barred out as aforesaid.

And this defendant further avers that he is informed and convinced, from a large amount of evidence collected, that producers of milk outside of the 70-mile zone, who do not belong to the aforesaid Milk Producers' Association, who have attempted to bring
19 their milk to Detroit and sell it to the public have been subjected to unfair competition and driven out of business. Defendant is informed and believes that said complainants are making hugh profits in handling and distributing milk in the city of Detroit, and that a number of them have paid and are paying stock dividends, and large cash dividends, and are making profits,

which are derived from the very large margin which they make per quart for distributing milk as aforesaid.

That this defendant has investigated the business, the handling and the delivery of milk, with much care, and believes that a charge of more than 7¢ per quart for delivering milk to the consumer is excessive and unreasonable. Therefore, this defendant said that a reduction in the price of milk if borne entirely by the distributors of milk, which includes the complainants, would not unfairly reduce their profits or constitute an injury to their businesses.

(10) This defendant says that he has not attempted to follow the computations and calculations set forth in paragraph 10 of the bill of complaint, but avers that they are not entitled to serious consideration and merely represent imaginary calculations.

(11) This defendant does not know what property and vehicles or organizations defendants have for the distribution of milk by reason of the lack of definite knowledge, neither admits nor denies the allegations in paragraph 11 of the bill, but leaves complainants to their proof.

(12) This defendant denies making the threats alleged in paragraph 12 of the bill as heretofore explained in this answer.

(13) This defendant denies that the Lever Act, so called, together with the amendment thereto, is invalid or unconstitutional for the reasons alleged in paragraph 13 of the said bill.

20 (14) This defendant admits that the subject matter of the controversy amounts to more than $3,000.00 and avers that 1¢ a quart on the milk supply of Detroit amounts to more than $1,000,000.00 a year. This defendant denies that compliance with the prices fixed by the fair price committee would involve the complainants in litigation over existing contracts for supplying milk and avers that in his opinion they could well afford to pay the producers the price which they are now paying without any legitimate injury to their businesses.

That with reference to threats, this defendant repeats what he has already said in paragraph 8 of this answer, and calls attention to his position heretofore stated in this answer. He denies that the prices fixed by the fair price committee are confiscatory or unfair and denies the right of complainants to carry on their businesses in such a way as to monopolize the milk business of the city of Detroit and to exact from consumers an excessive price for milk. He denies all other allegations in paragraph 14 not herein specifically admitted or denied.

(15) Defendant denies that the prices fixed by the fair price committee would, if complainant were compelled to abide by them, cause an irreparable injury to complainants' businesses, and denies that complainants are without adequate remedy at law.

(16) Defendant further answering, on information and belief, denies that the fair price committee acted capriciously, and without giving a hearing to the milk producers and distributors, and avers on like information and belief that a full hearing was given.

Defendant denies that it would involve a reduction in the price now paid to producers for milk and denies that it would create
21 a shortage of milk for the city of Detroit, unless such shortage was brought about by collusion between the two powerful agencies above referred to, the Michigan Milk Producers Association and the Detroit Bottle Exchange, which control the supply. He denies that the price fixed by the committee is confiscatory and denies that it would deprive complainants of a legitimate, legal, and proper profit in the business.

(17) This defendant says that the matters set up in paragraph 17 of the bill are not allegations of fact, but merely a reference to a decision of a court in a distant State, and defendant believes that he is not called upon to answer in any way the allegations in this paragraph.

(18) This defendant avers that said fair price committee and its members are involved in this controversy only on account of a past action on their part, and that no relief is sought against such past action, and no further action by said committee is prayed for in said bill, or contemplated so far as appears, and therefore there is a complete absence of any ground for an injunction against said committee.

This defendant further avers that no ground exists for an injunction against him as United States attorney for the Eastern District of Michigan, and that his right to act in his official capacity in accordance with his judgment on matters arising in his district can not properly be restrained by the court, and that any question arising under the law referred to which relates to its validity or its constitutionality can be readily tested by proper action when indictments are returned under the same, and under such proceedings, where an indictment is challenged on the ground aforesaid, speedy review of the same can be had before the Supreme Court of the United States, thereby settling the question as to the validity of the law conclusively and finally as to this and all other proceedings.

22 Defendant avers that this bill of complaint is filed solely to procure an injunction restraining the officers mentioned therein from acting in the line of their duty under the said statute known as the Lever Act, the said injunction being the one relief sought and not being incidental to any other proceeding.

For the above reasons and others, defendant says that the relief prayed for should be denied and the bill of complaint dismissed.

JOHN E. KINNANE,
United States Attorney, Eastern District of Michigan, Defendant.

EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, COUNTY OF WAYNE, *ss.*

John E. Kinnane, being duly sworn, deposes and says that he has read the foregoing answer subscribed by him as United States at-

torney for the Eastern District of Michigan and that the matters stated in the same are true, except as to those matters therein stated to be upon information and belief, and in respect to such matters said affiant believes the same to be true.

JOHN E. KINNANE.

Subscribed and sworn to before me this 28th day of April, A. D. 1920.

ELMER W. VOORHEIS,
Notary Public, Wayne County, Michigan.

My commission expires May 12, 1922.

23 *Agreement between the Michigan Milk Producers Association and Detroit milk distributors.*

No. 7639.

This agreement, made this ——— day of ————, A. D. 1918, by and between the Michigan Milk Producers' Association, a Michigan corporation, party of the first part, and ————————, party of the second part, witnesseth as follows:

Party of the first part agrees to sell to the party of the second part, and the party of the second part agrees to buy of the first part the milk of such of its members as the second party has been purchasing from during the month of December, 1918: Provided, however, that if any member at the time of signing his application for membership and agreement to make the said first party his selling agent for the year 1919, shall refuse or elect not to deliver his milk to the said second party, then the milk of such member shall be relieved from this agreement: And provided further, should the said second party desire to discontinue buying the milk of any member or members, they may be relieved from so doing by notifying the said second party in writing prior to January 1, 1919, giving the names and addresses of such above-mentioned members. This milk is to be bought and sold under the following terms and conditions:

For and in consideration of the mutual covenants, understandings, and agreements and advantages to the parties hereto, hereinafter contained, it is hereby mutually understood and agreed by and between the parties hereto that—

The party of the second part agrees to pay to the parties within the Detroit milk area from whom they receive milk during the period of from January 1, 1919, to January 1, 1920, such prices for milk delivered as the Detroit milk commission, as at present constituted, shall determine and fix, and to pay to the Michigan Milk Producers' Association one cent (1¢) per hundred pounds on all milk received or purchased within the said Detroit milk area as herein defined, and the parties to this contract hereby agree that the

prices so determined and fixed shall be the contract price, and
24 that from such price one cent (1¢) per hundred pounds shall be paid to the party of the first part and the remainder to the various parties furnishing the milk.

The milk furnished under this agreement shall be milked and handled in a cleanly manner in clean utensils, and the animal heat shall be removed by cooling immediately after milking; it shall also be produced and handled according to the rules promulgated by the Detroit board of health, and it shall be delivered daily either in Detroit or at a receiving station of the party of the second part.

Party of the second part agrees to buy, take, receive, handle, or distribute no milk other than that purchased from the party of the first part without the consent of the first party in writing, and in case such consent be given, the second party agrees to pay the first party one cent (1¢) on each hundred pounds for milk so purchased, taken, received, or distributed.

Should the party of the second part at any time require more milk for ———— trade ———— shall notify the party of the first part, and said party will endeavor to supply the same from the dairies of other producers, but in such case, unless by special agreement in writing to the contrary, the second party shall continue to take and pay for as above provided the milk from such newly acquired producer until the end of this contract period.

The party of the second part agrees to take fair and representative samples of the milk of each patron at least twice each month, and to make accurate tests of such sample to determine the per cent of butter fat contained therein, and to pay for milk delivered each month on or before the fifteenth of the following month.

Second party also agrees that the first party or its agent may at any time enter the second party's plant or receiving stations for the purpose of inspecting and sampling and testing of the milk, and if desired such agent shall be permitted to take samples and test the same. Should the contracting parties hereto be unable to agree upon the test, the matter shall be referred to the State food and drug commissioner, and his decision shall be final and binding on both parties.

25 It is further understood and agreed by and between the parties hereto that in the event of a general strike by the employees of said second party or of any transportation company or other unavoidable conditions whereby said second party is obliged to close down and *and* discontinue ———— business temporarily or permanently the said second party shall be released from ———— obligations under this contract during the continuance of such above-mentioned conditions, provided said milk commission shall decide that the said second party should in justice be released from said obligations.

The Detroit milk area as referred to above shall be construed to include all that territory lying within a radius of seventy miles of the city of Detroit.

This agreement shall be in force and effect from January 1, 1919, to January 1, 1920.

Witness our hands and seals the day and year first above written.

MICHIGAN MILK PRODUCERS' ASSOCIATION,
By ——— ———, *Secretary.*

Filed April 20, 1920.

ELMER W. VOORHEIS, *Clerk.*

26 *Answer of William F. Connolly.*

United States of America. In the District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity.

DETROIT CREAMERY COMPANY, BELLE ISLE EAST SIDE Creamery Company, John Schlaff Creamery Company, State Creamery Company, Towar's Wayne County Creamery, J. H. Wilson & Sons Creamery Company, plaintiffs,

vs.

JOHN E. KINNANE, WILLIAM F. CONNOLLY, FRED H. Diehl, William Brogan, Frances E. Burns, C. A. Clark, W. J. Cusick, and A. E. Sarvis, defendants.

No. 331.

The answer of William F. Connolly, defendant in the above-entitled cause to bill of complaint filed therein:

1. The defendant neither admits nor denies the allegations in the 1st and 2nd paragraphs of plaintiffs' bill of complaint, but as to the same leaves plaintiffs to their proofs.

2. Defendant denies the allegations in the 3rd paragraph of plaintiffs' bill of complaint; he denies that the Detroit milk commission is a body composed of men who, by reason of continuing investigation and contact with the conditions properly entering into a reasonable price for the retail and wholesale sale of milk have become practical experts, and denies that under the price schedule fixed from time to time by such commission the rights of the producers and distributors on the one hand and of the public on the other
27 have been duly protected and safeguarded, and denies that this defendant or the other defendants associated with him as members of the Federal fair price commission have committed any illegal and unlawful action.

3. Defendant admits that he and the other defendants, other than John E. Kinnane, claim and assert that they compose a board or body designated as "Federal Fair Price Commission," and that their authority is founded and vested upon certain statutes of the United States as set forth in paragraph 4 of plaintiffs' bill of complaint.

4. Defendant denies the allegations of the 4th paragraph of plaintiff's bill of complaint, and avers that he and the other members thereof were legally appointed and do now legally hold such office, and defendant denies the further averment of plaintiffs' 5th paragraph that their actions are void and of no effect.

5. The defendant admits the allegations of the 6th paragraph of plaintiffs' bill of complaint.

6. Defendant denies the allegations of the 7th paragraph of plaintiffs' bill of complaint.

7. Defendant neither admits nor denies the allegations of the 8th paragraph of plaintiffs' bill of complaint, but as to the same leaves plaintiffs to their proofs.

8. Defendant neither admits nor denies the allegations of the 9th paragraph of plaintiffs' bill of complaint, but as to the same leaves plaintiffs to their proofs.

9. Defendant neither admits nor denies the allegations of the 10th paragraph of plaintiffs' bill of complaint, but as to the same leaves plaintiffs to their proofs.

10. Defendant neither admits nor denies the allegations of
28 the 11th paragraph of plaintiffs' bill of complaint, but as to the same leaves plaintiffs to their proofs.

11. Defendant denies the allegations of the 12th paragraph of plaintiffs' bill of complaint, and says that neither this defendant nor the other defendants associated with him on the Federal fair price commission have exercised any threats or intimidations toward plaintiffs or their employees, and states that the said defendants associated with him on the Federal fair price commission have done no more than enter a finding that in their judgment the fair price of milk at retail in Detroit on and after April 15th, 1920, should be not more than 14 cents per quart and 8 cents per pint, and not more than 13 cents per quart and 7 cents per pint wholesale.

12. Defendant neither admits nor denies the allegations of the 13th paragraph of plaintiffs' bill of complaint, but as to the same leaves plaintiffs to their proofs.

13. Defendant neither admits nor denies the allegations of the 14th paragraph of plaintiffs' bill of complaint, but as to the same leaves plaintiffs to their proofs.

14. Defendant denies the allegations of the 15th paragraph of plaintiffs' bill of complaint in so far as said allegations set forth the illegality of the Federal statutes under which this defendant and his associates on the Federal fair price commission are acting.

15. Defendant denies the allegations of the 16th paragraph of plaintiffs' bill of complaint, and denies that either he or his associates on the Federal fair price commission acted capriciously and without affording the plaintiffs any real opportunity to be heard and without any proper examination or investigation into the facts, but states
to the contrary that he and his associates on the Federal fair
29 price commission gave an adequate hearing and made an adequate investigation upon which to found their judgment

as aforesaid. This defendant further states that while the Detroit milk commission has assumed to fix the price for milk in Detroit it is a wholely extra legal body and that its action in that regard is void and without binding force and effect upon anybody. As to the other allegations of the 16th paragraph of plaintiffs' bill of complaint, this defendant neither admits nor denies the same, but leaves plaintiffs to their proofs, except that this defendant states that the price fixed by the defendants herein is not confiscatory, but on the contrary, is a fair and reasonable price for milk in the city of Detroit at this time.

16. This defendant neither admits nor denies the allegations of the 17th paragraph of plaintiffs' bill of complaint. This defendant denies that the plaintiffs or any of them are entitled to the relief in their said bill of complaint prayed, but further state that there is no future action of this defendant or his associates on the Federal fair price commission to be enjoined or restrained in this behalf; that they have done their full duty under the law and are now in this behalf functus officio, and this defendant therefore prays that the plaintiffs' bill of complaint be dismissed as to himself and his associates on the Federal fair price commission, viz, Fred H. Diehl, William Brogan, Frances E. Burns, C. A. Clark, W. J. Cusick, and A. E. Sarvis.

WILLIAM F. CONNOLLY.

30 EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, COUNTY OF WAYNE, *ss:*

William F. Connolly, being duly sworn, deposes and says that he has read the foregoing answer subscribed by him, and that the matters stated in the same are true except as to those matters therein stated to be on information and belief, and as to those matters he believes it to be true.

WILLIAM F. CONNOLLY.

Subscribed and sworn to before me this 22nd day of April, A. D. 1920.

BARBARA C. THOMAS,
Notary Public, Wayne County, Mich.

My commission expires Nov. 8, 1920.

Filed April 22, 1920.

ELMER W. VOORHEIS,
Clerk.

31 In the District Court of the United States for the Eastern District of Michigan, Southern Division.

DETROIT CREAMERY COMPANY ET AL., PLAINTIFFS,
vs.
JOHN E. KINNANE ET AL., DEFENDANTS. } No. 331.

Messrs. Stevenson, Carpenter, Butzel & Backus, and Mr. D. B. Hayes, of Detroit, Michigan, attorneys for plaintiffs.

Hon. John E. Kinnane, of Bay City, Michigan, United States district attorney.

Preliminary memorandum opinion.

TUTTLE, District Judge: After careful consideration of the bill of complaint and answer, I am of the opinion that the application for a temporary injunction should be granted pending the final hearing.

I am satisfied that the provision of section 4 of the food control act, as amended, making it unlawful for any person "to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries" standing alone, is too vague and uncertain to constitutionally create any offense against the United States, as that would make the criminality of the act denounced depend in any given case upon the opinion of the jury in that case as to whether the rate or charge involved therein was just or unjust, reasonable or unreasonable, without any definite standard or test for the guidance of such jury or of the accused. United States vs. Brewer, 139 U. S. 278, 35 L. Ed. 190; Louisville & Nashville R. R. Co. vs. Railroad Commission of Tennessee, 19 Fed. 679; Tozer vs. United States, 52 Fed. 917; Hocking Valley Ry. Co. vs. United States, 210 Fed. 735; United States vs. L. Cohen Grocer Co. (recent unreported decision of United States District Court for Eastern District of Missouri); United States vs. Capital Traction Company, 34 App. D. C. 592; Louisville & Nashville R. R. Co. vs. Commonwealth, 99
32 Ky. 132, 35 S. W. 129.

This indefiniteness and vagueness in the statute can, in my opinion, be cured only if provision has been lawfully made for proper investigation, hearing, and findings by some officer or tribunal properly created under said statute; and even in that event such findings must, of course, be in accordance with the due process of law. Whether such provision has been made and, if so, whether such due process of law has been followed, are questions which are open to grave doubt, but which need not be determined now in advance of final hearing. In view, however, of the allegations in such bill as to the confiscatory character of the price schedule alleged therein to have been fixed by a so-called fair price commission, it seems clear that the restraining order sought should be

granted, even assuming that the statute itself is not unconstitutional and void for the reason just referred to.

It is clear that the allegations of the bill make the equitable relief prayed the proper remedy. Vicksburg Water Works Co. vs. Vicksburg, 185 U. S. 65, 46 L. Ed. 808; Cincinnati vs. Cincinnati & Hamilton Traction Co., 245 U. S. 446, 62 L. Ed. 389.

Judicial notice is taken of the fact that during the past few days numerous criminal prosecutions have been instituted in this district, indictments returned and arraignments had under section four of the food control act charging that unjust or unreasonable prices have been charged for necessaries, indicating an intention on the part of the United States attorney for this district to enforce said clause of said act.

It follows that the temporary restraining order will be entered forthwith.

ARTHUR J. TUTTLE,
District Judge.

DETROIT, MICHIGAN, *April 20th, 1920.*

Filed April 20, 1920.

ELMER W. VOORHEIS,
Clerk.

33

Restraining order.

United States of America. In the District Court for the Eastern District of Michigan, Southern Division.

BELLE ISLE EAST SIDE CREAMERY COMPANY, DETROIT Creamery Company, Towar's Wayne County Creamery Company et al., plaintiffs,

vs.

JOHN E. KINNANE, WILLIAM F. CONNOLLY, ET AL., defendants. } No. 331.

In the above-entitled cause application having been made for a temporary injunction, the court after reading bill of complaint and answer, and after due consideration thereof doth order and decree that the defendant John E. Kinnane be restrained and prohibited, until the further order of the court, from enforcing or attempting to enforce any criminal proceedings against the plaintiffs or any one of them for violation of section 4 of Lever Act on the charge of making an unjust or unreasonable rate or charge in handling or dealing in or with any necessaries.

Dated Detroit, Michigan, April 20, 1920.

ARTHUR J. TUTTLE,
District Judge.

Countersigned—
ELMER W. VOORHEIS,
Clerk.

Filed April 20, 1920.

ELMER W. VOORHEIS,
Clerk.

34 *Stipulation waiving proofs.*

United States of America. In the District Court of the United States for the Eastern District of Michigan, Southern Division, in equity.

DETROIT CREAMERY COMPANY, BELLE ISLE EAST SIDE Creamery Company, John Schlaff Creamery Company, State Creamery Company, Towar's Wayne County Creamery Company, J. H. Wilson & Sons Creamery Company, complainants,

vs.

JOHN E. KINNANE, WILLIAM F. CONNOLLY, FRED H. DIEHL, William Brogan, Frances E. Burns, C. A. Clark, W. J. Cusick, and A. E. Sarvis, defendants.

No. 331.

It is hereby stipulated, by and between the parties to the above-entitled cause, by their respective attorneys, as follows:

That in view of the decision of the court in this cause on April 20, 1920, which granted a temporary restraining order or injunction against the United States attorney for the Eastern District of Michigan, defendant herein, restraining him from prosecuting the complainants, or any of them, under a certain provision of section 4 of the Lever Act, so-called, as amended; and holding and deciding that the provision of section 4 of the aforesaid act of Congress, as amended, in so far as it declares it to be unlawful to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries, or to exact excessive prices for necessaries, is unconstitutional and void; and said decision being controlling and decisive in the case, and based entirely upon the law,

It is therefore considered unnecessary to take proofs in this cause for the reasons aforesaid, the aforesaid question of law being controlling and decisive;

It is therefore stipulated and agreed as aforesaid, that the case proceed to a final hearing without the taking of proofs, and that the taking of proofs herein be dispensed with.

35

LEO M. BUTZEL
and
D. B. HAYES,
Attorneys for Complainants.

JOHN E. KINNANE,
U. S. Attorney.

Filed April 22, 1920.

ELMER W. VOORHEIS,
Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION.

DETROIT CREAMERY COMPANY ET AL., PLAINTIFFS,
vs.
JOHN E. KINNANE ET AL., DEFENDANTS. } No. 331.

Messrs. Stevenson, Carpenter, Butzel & Backus, and Mr. D. B. Hayes, of Detroit, Michigan, attorneys for plaintiffs.

Mr. James E. Greene, of Lansing, Michigan, attorney for intervenor.

Hon. John E. Kinnane, of Bay City, Michigan, United States district attorney.

Memorandum opinion on final hearing.

TUTTLE, District Judge: The sole question involved in this case is whether the provision of section four of the food control act, also known as the Lever Act, being the act of Congress of August 10, 1917, chapter 53, 40 Statutes at Large, 276, as amended by section two of the act of October 22, 1919, making it unlawful for any person, among other things, "to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries" is constitutional.

Plaintiffs filed their bill of complaint herein, alleging that they were engaged in the business of purchasing milk from producers thereof and preparing the same for the market and for resale distribution to the consumers thereof within the city of Detroit and adjacent territory; that the price of milk for the past several years in Detroit has been established between the producer and the distributor by the Detroit milk commission, "a body composed of men who, by reason of continuing investigation and contact with the conditions properly entering into a reasonable price for the retail and wholesale sale of milk, have become practical experts"; that under
37 the price schedule fixed from *time* to time by said commission the rights of the said producers and distributors on the one hand and of the public on the other had been properly protected and that the price of milk per quart for sale at retail to the public had been prescribed for the month of March, 1920, at sixteen cents per quart, based on a certain price to the producers as set forth in the bill; that the defendants other than John E. Kinnane (the latter being United States attorney for this district) claimed that they composed a body designated as a "Federal fair price commission," appointed under authority of the so-called Lever Act hereinbefore mentioned, and as such had attempted to prescribe a schedule for the sale of milk at retail to commence April 15, 1920, at fourteen cents per quart; that said defendants did not hold any legal office, and that their action in attempting to prescribe such rate was void and

of no effect; that the defendant, Kinnane, was the United States district attorney, as aforesaid, and as such had stated publicly that he would cause to be prosecuted any person failing to comply with the price schedule so prescribed by the so-called fair price commission mentioned, as a violation of the said Lever Act; that plaintiffs had in their employ upwards of five hundred milk salesmen selling their milk at retail to householders and consumers daily and that the fines capable of being levied or claimed rightfully to be levied on one day's transactions against such salesmen would aggregate millions of dollars; that plaintiffs had in their retail milk business large numbers of vehicles of various kinds, representing many thousands of dollars; that by reason of the aforesaid threats of the defendants against plaintiffs, said milk salesmen would not continue to deliver milk at lawful prices and as a result of the claimed and usurped authority of the defendants, unless restrained, the business of the plaintiffs would be irreparably injured and destroyed; that in so far as said act undertook to make it unlawful for any person "to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries" it did not legally create
38 any crime under the United States constitution, particularly the sixth amendment thereto, for the reason that such alleged crime was expressed in such vague, indefinite, and uncertain manner, without any reasonably certain standard, as to be a violation of the rights of citizens of the United States, such as the plaintiffs; that the threatened criminal prosecution referred to would involve the plaintiffs in contractual difficulties and litigation over existing contracts for the supplying of milk to them, would result in the destruction of their established business and would operate to deprive the plaintiffs of their property without due process of law, in violation of said constitution and that they were entitled to come into this court to enforce their Federal rights thus threatened; that the defendants were claiming to act under order of the said Lever Act, but as such act is void it affords them no justification and renders them liable to be enjoined from inflicting upon plaintiffs the wrongs complained of, and that the plaintiffs had no adequate remedy at law and this court had sole jurisdiction of the subject matter of their grievance; that the said defendants other than the said Kinnane acted capriciously and without affording the plaintiffs any real opportunity to be heard and without any proper examination or investigation into the facts, and that the price fixed by such so-called Federal fair price commission was confiscatory and illegal. Plaintiffs further challenge the constitutionality of said Lever Act on the grounds that it was vague, indefinite and uncertain; that it fixed no immutable standard of guilt but left such standard to the variance of the different courts and juries which might be called upon to enforce it; that it did not inform those accused of its violation of the nature of the accusation against them nor as to what acts would constitute such violation; that it failed to define a crime, but in essence merely declared that any person who should commit any unjust

or unreasonable act should be guilty of a felony; and that if enforced it would deprive citizens of the United States of their property and liberty without due or any process of law. Plaintiffs prayed that the defendants be enjoined temporarily
39 and permanently from attempting to enforce the schedule of rates complained of, from interfering with the free conduct of their business by commencement of criminal proceedings or otherwise, and from harrassing or oppressing them in the premises. The bill concluded with a prayer for general relief.

An answer was filed by the district attorney in which he alleged that he and the other defendants constituted a body designated as the Federal fair price committee, having been legally so appointed by the Attorney General of the United States; that as district attorney he approved of the judgment of said committee in its aforesaid action; that he had not made any statement or reached any determination as to any method of procedure against the plaintiffs for selling milk at excessive prices, but that it was probable that prosecution would be based on the provisions of said Lever Act providing punishment for monopolizing or attempting to monopolize the milk supply of the city of Detroit or for conspiring to limit the facilities for supplying milk to said city, or to restrict said supply or the distribution thereof in order to enhance the price thereof; that the arrangements under which the producers and distributers, including the plaintiffs, supplied milk to said city deprived the latter, in an arbitrary and unreasonable manner, of its natural supply thereof and restricted the free sale of milk to the people of said city; that the plaintiffs were making hugh profits in handling and distributing milk in said city and that a number of them had paid stock dividends and large cash dividends derived from the very large margin which they make per quart for distributing said milk; that the retail charge made by plaintiff for delivering milk to consumers was excessive and unreasonable and that a reduction in such price if borne entirely by the distributers of milk, including the plaintiffs, would not unfairly reduce their profits or injure their business; that the said Lever Act as amended was not unconstitutional as charged in the bill; that compliance with the prices fixed by the said fair price committee would not involve the plaintiffs in litigation over existing contracts for supplying milk; that such prices were not confisca-
40 tory or unfair and would not cause irreparable injury to plaintiffs; that such prices were not fixed capriciously, but after a full hearing to the milk producers and distributors; that no ground exists for an injunction against him as United States attorney, as his right to act in his official capacity in accordance with his judgment can not properly be restrained by this court, but that any question arising under the law involved can be readily tested by proper action in proceedings brought for the enforcement thereof and that the relief prayed should be denied and the bill of complaint dismissed.

An intervening petition was filed by the Michigan Milk Producers Association, alleging that it was composed principally of farmers and dairymen throughout the State of Michigan who were engaged in the business of selling and delivering milk to the plaintiffs and that such association was under contracts with the plaintiffs for the sale of such milk, all of which was produced by the members of said association upon their farms to be distributed and sold within said city of Detroit and vicinity. Petitioner alleged that by virtue of said contracts it claimed an interest in this suit and that as it would be vitally affected by the outcome of such suit it prayed for permission to intervene as a codefendant therein and to file a separate answer in order to protect its interests. In such answer as afterwards filed, said petitioner admitted the material allegations in the bill and practically joined with the plaintiffs seeking the same relief and on the same grounds prayed by them.

On the hearing of the application for temporary injunction, the defendants, including the district attorney, conceded that the Federal fair price commission, also referred to as the Federal fair price committee, referred to in the pleadings, had no official standing or authority to fix rates or charges which were binding upon anyone, but was limited in its functions to informal investigations into conditions
41 surrounding the making of prices for the commodities mentioned in the Lever Act and to advising, in an unofficial capacity, the district attorney in connection with such prices.

On such hearing this court granted such application as against the district attorney and issued such temporary injunction pending the final hearing on bill and answer, restraining said district attorney "until the further order of the court, from enforcing or attempting to enforce any criminal proceedings against the plaintiffs or anyone of them for violation of section four of the Lever Act on the charge of making an unjust or unreasonable rate or charge in handling or dealing in or with any necessaries." In view on the concession just mentioned in regard to the status of the other defendants, they were not made parties to said injunction.

The parties hereto have now filed a stipulation setting forth that "in view of the decision of the court in this cause on April 20, 1920, which granted a temporary restraining order or injunction against the United States attorney for the Eastern District of Michigan, defendant herein, refraining him from prosecuting the complainants, or any of them, under a certain provision of section 4 of the Lever Act, so called, as amended; and holding and deciding that the provision of section 4 of the aforesaid act of Congress, as amended, in so far as it declares it to be unlawful to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries, or to exact excessive prices for necessaries, is unconstitutional and void; and said decision being controlling and decisive in the case, and based entirely upon the law, it is therefore considered unnecessary to take proofs in this cause for the reasons aforesaid, the aforesaid question of law being controlling and decisive; it is therefore stipulated and

agreed as aforesaid, that the case proceed to a final hearing without the taking of proofs, and that the taking of proofs herein be dispensed with."

42 The only question, therefore, now involved is whether the provision of section four of this Lever Act as amended to the effect that "it is hereby made unlawful for any person * * * to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries," is constitutional.

The sixth amendment to the Federal Constitution provides that "in all criminal prosecutions the accused shall enjoy the right * * * to be informed of the nature and cause of the accusation." It seems clear that an indictment which, following the language of this statute, charged a person with merely having made an "unjust" or "unreasonable" rate or charge in handling or dealing in or with any necessaries would be wholly insufficient to inform such person of the nature and cause of the accusation thus made.

Such an indictment, however, could not specify the offense thus charged with any more detail for the reason that the statute purporting to create such offense does not state the facts, acts or conduct necessary to constitute the crime denounced. What is an unjust rate or an unreasonable charge? In determining this question, what elements are to be taken into consideration? What is the test or standard or basis which is to be used in attempting to ascertain whether this statute has been violated? The statute itself furnishes no assistance in the way of answering this question. Is the reasonableness or justice of a rate to be determined by the amount of profit derived therefrom? If so, what percentage of profit from the business of selling a certain article makes the rate or charge in handling or dealing in that article unreasonable and therefore unlawful and criminal? If such profit is derived from a business devoted to the sale of several kinds of articles, how is the portion of such profit properly chargeable to each of such articles to be determined so that the person engaging in such business may know whether or not

43 he is a criminal? What elements enter into the question whether any particular charge is just or unjust, reasonable or unreasonable? What relation to the reasonableness of a rate have the cost of labor, the cost of machinery and of raw material, the cost of overhead charges, and the other expenses of production? How is the amount properly chargeable to these expenses to be fixed and ascertained? To what extent are differences in market conditions in different places to be considered? Is the existence or absence of competition to be taken into account? Is any allowance to be made for losses and misfortunes which affect costs and profits? To whom must a rate or charge be unjust, to be "unjust" within the meaning of this statute? Is it the effect which a rate or charge has upon the seller or which it has on the purchaser which renders it reasonable or unreasonable? These and other questions which readily suggest themselves naturally and perhaps necessarily enter into a consideration of the nature of the proper test or standard by which the crimi-

nality of any act under this statute must be determined. To the statute itself we look in vain for answers to any of such questions. It furnishes no means for the guidance of courts, juries, or defendants in determining when or how the statute has been violated. No standard or test of guilt has been fixed. We are left to the uncontrolled and necessarily conjectural judgment, or rather conclusion, of each particular jury, or perhaps, court, before which the accused in any given case may be on trial for his liberty. Making, as it does, the question of guilt dependent upon this mere conclusion, or opinion, of the court or jury as to whether the rate or charge involved be just or unjust, reasonable or unreasonable, I can not avoid the conclusion that this statute is too vague, indefinite, and uncertain to satisfy constitutional requirements or to constitute due process of law. United States vs. Brewer, 139 U. S. 278, 35 L. Ed. 190; Louisville & Nashville R. R. Co. vs. Railroad Commission of Tennessee, 19 Fed.
44 679; Tozer vs. United States, 52 Fed. 917; Hocking Valley Ry. Co. vs. United States, 210 Fed. 735; United States vs. L. Cohen Grocer Co. (recent unreported decision of the United States District Court for Eastern District of Missouri); United States vs. Capital Traction Company, 34 App. D. C. 592; Louisville & Nashville R. R. Co. vs. Commonwealth, 99 Ky. 132, 35 S. W. 129.

It is, of course, extremely unfortunate that in enacting this statute Congress should have neglected to observe the constitutional guaranties applicable, but this court can not amend the statute, either by judicial construction or otherwise, but can only interpret and apply it in accordance with rules of law. Any argument based upon what may be thought to be the practical effect of proper judicial construction must be addressed to the only tribunal which made or can make this statute or any other statute deemed by it necessary to carry out the purposes for which it passed this unconstitutional law. There can be no doubt of the power of this court to enjoin the defendant, although occupying the official position which he does, from attempting to enforce an unconstitutional criminal statute against the plaintiffs, in excess of his lawful authority and to their threatened and resultant irreparable injury, as alleged in the bill of complaint herein. Philadelphia Co. vs. Stimson, 223 U. S. 605, 56 L. Ed. 570; William Cramp & Sons Ship & Engine Building Co. vs. International Curtis Marine Turbine Co., 246 U. S. 28, 62 L. Ed. 560.

The commencement of various criminal prosecution based upon alleged violation of the statutory provision here involved clearly indicates the intention of the defendant district attorney to attempt the enforcement of this particular provision of the statute, and shows beyond doubt the propriety and necessity of the injunction sought.

Plaintiffs, however, are not required to wait until criminal
45 prosecutions are actually brought against them, before invoking the equitable relief to which they are entitled under the circumstances. Vicksburg Water Works Co. vs. Vicksburg, 185 U. S. 65, 46 L. Ed. 808; Waite vs. Macy, 246 U. S. 606, 62 L. Ed. 892.

In view of some of the allegations in the answer, it may not be amiss to make it entirely plain, if it is not already, that the only portion of this statute involved, construed, or considered here is the provision therein prohibiting the making of an "unjust or unreasonable rate or charge in handling or dealing in or with necessaries." No opinion is expressed concerning the meaning, scope, or effect of any other portions of such statute.

A decree will be entered making the temporary injunction permanent against the defendant Kinnane and dismissing the bill as to the other defendants.

ARTHUR J. TUTTLE,
District Judge.

DETROIT, MICHIGAN, *April 23, 1920.*

Filed April 23, 1920.

ELMER W. VOORHEES,
Clerk.

46 *Final decree.*

United States of America. In the District Court of the United States for the Eastern District of Michigan, Southern Division, in equity.

DETROIT CREAMERY COMPANY, BELLE ISLE EAST SIDE Creamery Company, John Schlaff Creamery Company, State Creamery Company, Towar's Wayne County Creamery, J. H. Wilson & Sons Creamery Company, complainants,

vs.

JOHN E. KINNANE, WILLIAM F. CONNOLLY, FRED H. Diehl, William Brogan, Frances E. Burns, C. A. Clark, W. J. Cusick, and A. E. Sarvis, defendants.

No. 331.

At a session of said court continued and held at the district court room of the United States, for the Eastern District of Michigan, Southern Division, in the Federal Building, in the city of Detroit, State of Michigan, within said district, on the 23rd day of April, 1920.

Present: Honorable Arthur J. Tuttle, district judge.

A temporary restraining order or injunction having been entered in this couse on April 20, 1920, restraining John E. Kinnane, United States attorney, from prosecuting the complainants, or any of them, under certain provision of section 4 of the Lever Act, so called, as amended, being the act of Congress approved August 10, 1917, as amended by act of Congress approved October 22, 1919, said court in making said order holding and deciding that the provision of section 4 of the aforesaid act of Congress, as amended, in so far as it declares it to be unlawful to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries, is un-

constitutional and void, as being vague and uncertain, said decision being based upon the aforesaid question of law;

And the said parties to this cause, through their respective attorneys, having by stipulation duly filed in this cause, waived the taking of proofs therein, for the reason that the aforesaid question of
47 law is controlling and decisive, and after a further hearing in which the same was submitted for final decision by the court, in which all parties to said cause by their respective attorneys, were fully heard before the court, and the court being fully advised in the premises,

It is ordered, adjudged, and decreed as follows:

(1) That the defendant, John E. Kinnane, United States attorney for the Eastern District of Michigan be, and he hereby is, permanently enjoined and restrained from enforcing or attempting to enforce any criminal prosecution or proceeding against the complainants, their agents and employees in this cause, or any of them, for making any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries, and that a permanent injunction may issue out of and under the seal of this court, restraining said defendant accordingly.

(2) That as to the defendants in said cause, other than said John E. Kinnane, the bill of complaint is hereby dismissed.

ARTHUR J. TUTTLE,
United States District Judge.

Filed April 23, 1920.

ELMER W. VOORHEIS,
Clerk.

48 *Injunction.*

United States of America. The District Court of the United States for the Eastern District of Michigan, in equity.

The President of the United States of America to John E. Kinnane, United States attorney for the Eastern District of Michigan and to his counselors, attorneys, solicitors, trustees, agents, and servants, and each and every of them, greeting:

Whereas it has been represented to us, in the District Court of the United States for the Eastern District of Michigan, in equity, on the part of Detroit Creamery Company, Belle Isle East Side Creamery Company, John Schlaff Creamery Company, State Creamery Company, Towars Wayne County Creamery, J. H. Wilson & Sons Creamery Company, plaintiffs, that they have lately exhibited their bill of complaint against you, the said John E. Kinnane, United States attorney for the Eastern District of Michigan, defendant, to be relieved, touching the matters therein complained of; in which bill it is stated, among other things, that you are injuring the said plaintiff touching the matters set forth in the said bill, and that your actings and doings in the premises are contrary to equity and good

conscience; we therefore, in consideration thereof, and of the particular matters in the said bill set forth, do strictly command you, the said John E. Kinnane, United States attorney for the Eastern District of Michigan, and the persons before mentioned, and each and every of you, under the penalty of ten thousand dollars, to be levied of your lands, goods, and chattels, to our use, that you do absolutely desist and refrain from enforcing or attempting to enforce any criminal prosecutions or proceedings against the complainants, their agents, and employees in said cause, or any of them, for making any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries, until the further order of this court.

Witness, the Honorable Arthur J. Tuttle, United States district judge for the Eastern District of Michigan, this 23rd day of April in the year of our Lord, one thousand nine hundred and twenty and of the independence of the United States of America the one hundred and forty-fourth.

[SEAL OF THE COURT.]

ELMER W. VOORHEIS,
Clerk.

Returned and filed April 23, 1920.

ELMER W. VOORHEIS,
Clerk.

49 Form No. 282.

Return on service of writ.

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

I hereby certify and return that I served the annexed injunction on the therein-named John E. Kinnane, United States attorney, by handing to and leaving a true and correct copy thereof with Frank Murphy, assistant United States attorney, personally at Detroit in said district, on the 14th day of May, A. D. 1920.

HENRY BEHRENDT,
U. S. Marshal.
By VERNON LECLAIR,
Deputy.

50 United States of America. In the District Court of the United States for the Eastern District of Michigan, Southern Division, in equity.

DETROIT CREAMERY COMPANY ET AL., COMPLAINANTS,
vs.
JOHN E. KINNANE ET AL., DEFENDANTS.
} No. 331.

Assignments of error.

And now comes the above-named defendant, John E. Kinnane, United States attorney for the Eastern District of Michigan, and

says that the District Court, who rendered the final decree in the above-entitled cause, erred in the following particulars, to wit:

I.

Said District Court erred in holding and deciding that the provision of section 4 of the Lever Act, so called, as amended, being the act of Congress approved August 10, 1917, as amended by act of Congress approved October 22, 1919, which declares it to be unlawful and criminal to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries, or to exact excessive prices for any necessaries, as unconstitutional and void.

II.

Said District Court erred in permanently enjoining said defendant, John E. Kinnane, District attorney as aforesaid, from enforcing or attempting to enforce any criminal prosecution or proceeding against the complainants in this cause, or any of them, for making any unjust or unreasonable charge or rate in handling or dealing in
51 or with any necessaries, or exacting excessive prices for any necessaries.

III.

Said District Court erred in holding the provision of section 4 of said Lever Act, as amended by the act of Congress approved October 22, 1919, which declares it to be unlawful and criminal to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries, unconstitutional and void on the ground of vagueness and uncertainty.

IV.

Said District Court erred in enjoining by the order and decree entered in this cause said defendant, John E. Kinnane, United States attorney, from enforcing or attempting to enforce any criminal prosecution against the complainants in the decree herein, for making any unjust or unreasonable rate or charge in handling or dealing in or with milk in the city of Detroit and State of Michigan, or any other necessaries.

V.

Said District Court erred in holding that the provision of said Lever Act as amended by act of Congress approved October 22, 1919, making it unlawful and criminal to make an unjust or unreasonable rate or charge in handling or dealing in or with necessaries, is unconstitutional and void.

VI.

Said District Court erred in failing and refusing to hold and decide that the provision of the said Lever Act, as amended, mentioned and described in assignment of error No. 1 is valid and constitutional.

VII.

Said District Court erred in failing and refusing to dismiss the bill of complaint filed herein as to all defendants, and in failing and refusing to deny the relief therein prayed for.

JOHN E. KINNANE,
United States Attorney, Eastern District of Michigan, Defendant.

Filed April 24, 1920.

ELMER W. VOORHEIS, *Clerk.*

52

Petition for appeal.

United States of America. In the District Court of the United States for the Eastern District of Michigan, Southern Division, in equity.

DETROIT CREAMERY COMPANY, BELLE ISLE EAST Side Creamery Company, John Schlaff Creamery Company, State Creamery Company, Towar's Wayne County Creamery, J. H. Wilson & Sons Creamery Company, complainants,

vs.

JOHN E. KINNANE, WILLIAM F. CONNOLLY, Fred H. Diehl, William Brogan, Frances E. Burns, C. A. Clark, W. J. Cusick, and A. E. Sarvis, defendants.

No. 331.

John E. Kinnane, United States attorney, defendant in the above-entitled cause, conceiving himself aggrieved by the final decree entered on the 23rd day of April, A. D. 1920, in the above-entitled cause, does hereby appeal from said decree to the Supreme Court of the United States, and he prays, that this, his appeal, may be allowed, and that the transcript of the record, together with the assignments of error and proceedings and papers upon which the said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 24th day of April, in the year of our Lord one thousand nine hundred and twenty.

JOHN E. KINNANE,
United States Attorney,
Eastern District of Michigan, Defendant.

Filed April 24, 1920.

ELMER W. VOORHEIS,
Clerk.
By CARRIE DAVISON,
Deputy Clerk.

53 *Order allowing appeal.*

Now, on to wit, this 24th day of April, in the year of our Lord one thousand nine hundred and twenty, it is ordered, that the appeal in the above-entitled cause be and the same is allowed as prayed for, and that the defendant be not required to file any bond on such appeal, he being a public official.

ARTHUR J. TUTTLE,
United States District Judge.

Filed April 24, 1920.

ELMER W. VOORHEIS,
Clerk.

54 The Supreme Court of the United States, Washington, D. C.

UNITED STATES OF AMERICA,
Sixth Judicial Circuit, ss:

To Detroit Creamery Company, Belle Isle East Side Creamery Company, John Schlaff Creamery Company, State Creamery Company, Towar's Wayne County Creamery, J. H. Wilson & Sons Creamery Company, greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be holden at the city of Washington, D. C., on the 24th day of May next, pursuant to an appeal filed in the clerk's office of the District Court of the United States for the Eastern District of Michigan, wherein John E. Kinnane, United States attorney, is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglas White, Chief Justice of the United States, this twenty-fourth day of April, in the year of our Lord one thousand nine hundred and twenty, and of the Independence of the United States of America the one hundred and forty-fourth.

ARTHUR J. TUTTLE,
United States District Judge.

Due and timely service of the within citation is hereby accepted this 3rd day of May, 1920.

LEO M. BUTZEL,
D. B. HAYES,
Attorneys for Appellees.

55 United States of America. In the District Court of the United States for the Eastern District of Michigan, Southern Division, in equity.

DETROIT CREAMERY COMPANY ET AL., COMPLAINANTS,
vs.
JOHN E. KINNANE ET AL., DEFENDANTS. } No. 331.

Designation.

And now comes the above-named defendant, John E. Kinnane, United States attorney for the Eastern District of Michigan, and designates the following papers as those which will constitute the record on appeal in the above-entitled cause:

Bill of complaint.
Answer of defendant John E. Kinnane to bill of complaint.
Answer of Wm. F. Connolly, defendant, to bill of complaint.
Memorandum of opinion upon application for restraining order.
Restraining order.
Stipulation by counsel waiving proofs.
Memorandum of opinion on final decree.
Final decree.
Permanent injunction.
Assignments of error.
Claim of appeal by defendant John E. Kinnane.
Order allowing appeal.
Citation.

JOHN E. KINNANE,
United States Attorney.

Filed April 24, 1920.

ELMER W. VOORHEIS,
Clerk.

56 United States of America. In the District Court of the United States for the Eastern District of Michigan, in equity.

DETROIT CREAMERY COMPANY, BELLE ISLE EAST SIDE Creamery Company, John Schlaff Creamery Company, State Creamery Company, Towar's Wayne County Creamery, J. H. Wilson & Sons Creamery Company,
vs.
JOHN E. KINNANE, WILLIAM F. CONNOLLY, FRED H. Diehl, W. William Brogan, Frances E. Burns, C. A. Clark, W. J. Cusick, and A. E. Sarvis. } No. 331.

EASTERN DISTRICT OF MICHIGAN, *ss:*

I, Elmer W. Voorhies, clerk of the District Court of the United States for the Eastern District of Michigan, do hereby certify and return to the claim of appeal of John E. Kinnane, United States

attorney, et al in the above entitled cause; that it is a true copy of the record and proceedings in said cause, as the same appear of record and on file in my office; that I have compared the same with the originals, and it is a true and correct transcript therefrom and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Detroit, in said district, this eighteenth day of May, in the year of our Lord one thousand nine hundred and twenty, and of the Independence of the United States of America the one hundred and forty-fourth.

[SEAL.] ELMER W. VOORHIES,
Clerk.

(Indorsement on cover:) File No. 27,733. E. Michigan, D. C. U. S. Term No. 376. John E. Kinnane, United States Attorney for the Eastern District of Michigan, appellant, vs. Detroit Creamery Company et al. Filed June 3d, 1920. File No. 27,733.

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In the Supreme Court of the United States.

OCTOBER TERM, 1920.

JOHN E. KINNANE, UNITED STATES ATTORNEY for the Eastern District of Michigan, Appellant,
v.
DETROIT CREAMERY COMPANY, ET AL. } No. 376.

THE UNITED STATES OF AMERICA, PLAINTIFF in error,
v.
BEN B. SWARTZ. } No. 377.

THE UNITED STATES OF AMERICA, PLAINTIFF in error,
v.
JACOB M. SMITH. } No. 378.

MOTION TO ADVANCE.

In each of these cases the sole question involved is the constitutionality of section 2 of the act of October 22, 1919 (41 Stat., 1st sess., c. 80, p. 297), making it unlawful for any person, among other things, "to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries." This is the same question which is involved in the cases of *United States* v. *L. Cohen Grocery Company*, No. 324; *Harry A. Tedrow* v. *A. T. Lewis & Son*

Dry Goods Company, No. 357, and *R. E. Kennington* v. *A. Mitchell Palmer*, No. 367, all of which have been advanced and set for hearing on October 11, 1920.

The Solicitor General, on behalf of the United States and also of opposing counsel, moves that these causes be likewise advanced and set for hearing on October 11.

Respectfully submitted.

WILLIAM L. FRIERSON,
Solicitor General.

SEPTEMBER, 1920.

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